

**2017 SENATE GOVERNMENT AND VETERANS AFFAIRS**

**SCR 4006**

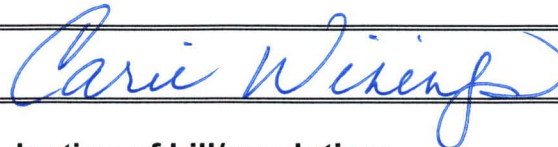
# 2017 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee  
Sheyenne River Room, State Capitol

SCR 4006  
1/26/2017  
Job Number 27440

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A concurrent resolution making a formal application to Congress to call a countermand amendment convention for the sole purpose of proposing an amendment to the United States Constitution to provide states a process to collectively countermand or repeal any federal law or ruling.

## Minutes:

No Attachments

**Chairman Poolman:** Opened the hearing on SCR 4006.

**Senator O. Larsen, District 3:** Testified to explain and in support of the resolution. We bring this resolution to you again. It is from last session pretty much word for word. I think our problem last session was that we were inundated with way too many issues on the countermand, on the balanced budget, the convention of states, etc. It was absolutely overwhelming and if you were not a constitutional lawyer, it was too much. We were able to pass one and that was the balanced budget amendment. We did pass the delegate and now this one is the new issue this session that talks about a countermand and a convention of issues. (Gave an example.) This is a mechanism that says that anything that comes up that the group of states are agreeable on, they can say "no" that is a push back and that they do not want that. It will cost the people to re think how they are going to do business at the national level. Everyone thinks the civil war was a fight over slavery, but the footsteps, the original part of the whole ruffling of what started that is that the federal government started coming in and throwing stuff down the throat of the states that they no longer wanted to deal with so they started to rise up and it got ugly. This is a way to keep it civil.

**(3:34) Charles Kacprowicz, National Chairman and Executive Director, Citizen Initiatives on the Countermand Amendment:** Testified in support of the bill. We have been working on issues relating to Article 5 for almost 44 years. Most of it has been through congress. In the last 6-7 years it has been through the state legislatures. Countermand amendment is the focus of my attention. The countermand amendment, which we hope will be the 28<sup>th</sup> Article of the Constitution, allows the state legislatures to countermand and rescind federal laws and rulings that are burdensome to their states and their citizens when 60% of the states countermand that particular law. It could be a variety of issues. When 30 states countermand they have to do what the states say. When you countermand and rescind



something, that doesn't mean that the federal government is out of the picture. It means that they have the option to either abandon that law or re write it. If they re-write it, they are going to do it in a way amenable to the states because they know that too can be countermanded. You are going to be looked at as partners in government rather than the subject of federal mandates. This is very important. In its non-partisan aspects, it means that your states rights will be protected even though your population is extremely small compared to the other states. The Article restores states sovereignty in our constitutional republic by providing state legislatures countermand authority. With the countermand amendment, which you totally control as legislators, you will be able to countermand and rescind anything that is offensive to your state all at the same time. Once 60% countermand that same law, it now becomes an un-enumerated right in the 10<sup>th</sup> Amendment. Now you are actually the un-enumerated rights. You are building a list of issues that the federal government will not be able to come against you again in the future. It means that all of the sudden the federal government is not going to push it down your throat that they have done over the last 50 years. They will have to respect you. Even the Supreme Court would be subject to your sovereignty. As I alluded before, the supremacy clause in the Constitution is something stated but the Supreme Court had decided back in *Mulberry vs. Madison* that in fact they are the final say on all Constitutional issues. When the Supreme Court makes a decision, that becomes a Constitutional Amendment without ratification by the states. All of the sudden you are bound by it and they have violated the authority that you have in Article 5. Article 5 is the most important article in the Constitution because "we the people", through our elected and accountable representative have influence on the conduct of the federal government. The state legislatures have the authority to countermand and rescind any congressional statute, judicial decision, executive order, treaty, government agency, regulatory ruling or any other government or non-government mandate including excessive spending and credit imposed on them when the opinion of 60% of the state legislatures the law or ruling adversely effects their states interests. When the countermand threshold has been reached the law or ruling shall be immediately and automatically nullified and repealed. This countermand authority shall also apply to existing laws and rulings. (Example given. ) The countermand would work based on the decision you make. Citizen initiatives would have no say on how you use it. It may influence your decision by trying to make decisions. You will be the final judge. You will probably have a countermand committee, you would compose it as you would be comfortable with – 2,3,5, 100 people, that looks at issues that are very important to your states where there is an encroachment problem by the federal government. Then you prioritize them and you will decide which ones need to be countermanded. You would vote on it as a legislature and once that happens, you send out a certified copy to the other 49 countermand committees and the other legislatures. You would give them your reasons for why you are doing it and you ask them to join you in the countermand. All of the sudden, now you have a manageable process by which the states can say to the federal government not to go too far. They don't want to put them out of business, but they don't want them to go too far. The biggest issue at Constitutional Convention was states sovereignty. Even before that convention was convened, there was a great debate as to how they would vote. The larger states wanted voting by popular vote. The smaller states did not agree. They wanted it to be a republic so that every state had equal standing. That is how Article 4 got in the Constitution. They set a committee up with George Worth who was a distinguished attorney and delegate, politician, and professor and they organized a committee and set the rules that they wanted the delegates to agree to and they came out with one vote per state. That is how we became a republican convention and eventually a republican form of government. Article 5 came into



it because they wanted to make sure that the states still controlled the future of the country. They didn't want the popular vote deciding the direction. If we lose our Constitutional Republic, the individuality that we have in the states will be lost. (Talked about Louisiana.) We do not want to lose each states individual characteristic. The federal government is saying to the states that they are not going to think as individual states and that they are going to think as they want them to think. As a result, the states are losing the battle because they have no way to counter them. This is the tool to say to the federal government they went too far. There have been some disagreements with some Article 5 groups saying they don't want legislatures to have authority over the supremacy clause of the Constitution when it comes to the Supreme Court. The countermand amendment will not take away the supremacy clause in the Constitution. It will remain the same, but it will be subject to 60% of the state legislatures rescinding it. If the supremacy clause, which the Supreme Court relies on, decides that they are going to make a ruling that it is offensive to the states and the states can rescind that. My personal position, I will not allow those arguments to negate the sovereign authority over even the Supreme Court. I want the state legislatures to be in charge in literally every aspect. When you are sovereign you do not have to ask someone's permission to do something. You have the ability to say to your delegates and to the federal government that they are not going to go that far. You have the ability to determine who the delegates are and how they are going to be selected etc. When you start a countermand today you have 18 months to complete it. That means that you have to secure 29 other states for that countermand in order for it to rescind. If it goes beyond that, then it will be nullified and you will have to redo it. It is because we don't want to lock the federal government up to the point where they don't know what to do. We had to find a way to protect the federal government to conduct itself properly. We are telling congress to convene the Article 5 Countermand Amendment Convention within 60 days of the 34 applications from the states. Congress is the facilitator of the Article 5 process; they are not the controller. They are subject to your authority. That is why the supremacy clause is subject to your authority. You are not subject to Congress; other than you agree to abide by Congress's laws within the context of the federal government structure, but when the offense comes you have a way in which to stop it. You are not telling the federal government you are going to put them out of business but you are stating your position. If Congress will not convene you can do it yourself, you are sovereign. You do not need them to get this done. When 34 states complete their applications it no longer is an application; it is now a mandate on Congress. The founders wanted a way to make certain that you had the sovereign authority but that it was in a structure that would allow the constitution to be amended only under more severe conditions. It takes 38 to ratify.

**(19:30) Senator Bekkedahl:** If we have the countermand approval, and it takes 38 states, and that process goes forward and it happens and then there is a process to convene the amendment convention as needed for the countermand issues; if California never wanted to be part of this, would they still have the ability to form a countermand delegation? And what if they did not do that?

**Charles Kacprowicz:** Yes, they will be represented by the very fact that they want to address an issue. They have every right if this is ratified to countermand. The key is you guys and the smaller states because there are still far more conservative smaller states than there are liberal states. It is a built in protection here. It is to keep states' rights and personal liberties in the forefront.

**Senator Bekkedahl:** If the Constitution was amended to bring in the countermand amendment, then even if California or another state did not participate in the process, just by its passage they have the same rights as everyone else?

**Charles Kacprowicz:** Yes, they do and they are bound by it also.

**Chairman Poolman:** Closed the hearing on SCR 4006.



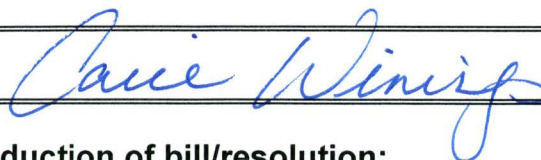
# 2017 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee  
Sheyenne River Room, State Capitol

SCR 4006  
2/2/2017  
Job Number 27819

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A concurrent resolution making a formal application to Congress to call a countermand amendment convention for the sole purpose of proposing an amendment to the United States Constitution to provide states a process to collectively countermand or repeal any federal law or ruling.

## Minutes:

No Attachments

**Chairman Poolman:** Opened SCR 4006 for committee discussion.

**Senator Bekkedahl:** This is where these issues become a little confusing to me. You have the balanced budget amendment, convention of state, the countermand amendment, etc. All of them, as I understand it, have some tie to Article V of the Constitution which is the convention of states application. That seems to be the overriding interest to all of these. Then you have the specificities. I wonder in my own mind if just the convention of states opportunity is enough to bring countermand, balanced budget, and we do it with all resolution. I want to know more about it if anyone else does.

**Chairman Poolman:** I do not know much more about it. I always wonder how it works; this talks about repealing any federal law or ruling. I not know how that sets it up for us to question the Supreme Court ruling. It just doesn't seem like he three branches allow us to do that.

**Senator Vedaa:** From what I understand you need 34 states to come together and you can go against that. When I signed on as a sponsor of this and that is what I was told. That it is just a way for our state government to say no that we are not going to do what you, the federal government, say. The gentleman talked so much and it was hard to keep the two bills separate that we heard that day. He talked about the same thing on both of them.

**Chairman Poolman:** I agree that we can probably keep them going and in the second half of the session, as things are weeded out, and we can allow the House to figure that out.

**Senator Bekkedahl:** In my mind, the first issue we just dealt with was tightening up the eligibility and the performance and the replacement of delegates to a convention of states issue. That is far more prescriptive and that needs to move forward. As to this one, this deals

just with the countermand. From my perspective, I would like to hear a floor debate on this from people that are more knowledgeable.

**Senator Bekkedahl:** Moved a Do Pass.

**Senator Vedaa:** Seconded.

**Chairman Poolman:** I would agree. I think that hearing from those who are passionate and do know a lot more than I do is probably wise in this case.

**A Roll Call Vote Was Taken: 4 yeas, 1 nay, 1 absent.**

**Motion Carried.**

**Senator Vedaa will carry the bill.**





**REPORT OF STANDING COMMITTEE**

**SCR 4006: Government and Veterans Affairs Committee (Sen. Poolman, Chairman)**  
recommends **DO PASS** (4 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING).  
SCR 4006 was placed on the Eleventh order on the calendar.

**2017 HOUSE GOVERNMENT AND VETERANS AFFAIRS**

**SCR 4006**



# 2017 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee  
Fort Union, State Capitol

SCR 4006  
3/3/2017  
28690

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A concurrent resolution making a formal application to Congress to call a countermand amendment convention for the sole purpose of proposing an amendment to the United States Constitution to provide states a process to collectively countermand or repeal any federal law or ruling

## Minutes:

Attachment 1

**Chairman Kasper** opened the hearing on SCR 4006.

**Senator O. Larsen** appeared in support of SCR 4006. There were too many issues last session. This one is the Article V countermand which was heard in the Senate again with no floor debate. He talked about Section 3 and a 18-month timeframe. (:03:24-:04:19)

**Chairman Kasper:** Where is the time frame?

**Senator Larsen:** The time frame is 18 months. (:04:54-:06:43)

**Rep. B. Koppelman:** Would that convention with our delegates decide how the countermand amendment was going to work?

**Senator Larsen:** That was that fine tune clarity that we were talking about in the last bill (2145). The resolution is saying we are on board with them. The delegate part is what we talked about previously.

**Rep. B. Koppelman:** Is that previous bill directing the delegate to do what he or she is supposed to do and to have that committee guide them the proper path? Is that more tied in with the concept of the countermand amendment than it is tied in with the delegate faithfulness law of let's say any Article V call that might happen? What we now have on the books is more generic.

**Senator Larsen:** I already hashed all that out. This resolution says we are coming. We will do a countermand amendment.

**Rep. Olson:** Referring to Page 1, Line 25, what is the preapproved proposed countermand amendment by the state legislatures?

**Senator Larsen:** That is the information in the delegate resolution part. They are the ones that the legislature has the handle on the delegates. They will find out what the delegates want to do with okay and authority of the legislature to bring up whatever they are going to bring up.

**Vice Chair Louser:** I am on the countermand website, and there is text of the proposed countermand amendment which they would reference as Article 28, and there are eight sections, one of which references the 18 months that Senator Larsen was talking about. If this is coming from the same expert, they have language that the committee needs to consider looking at. Attachment 1.

**Rep. Olson:** You are saying that the answer to my question is that there is a bill on a website. How do I know that this means that bill?

**Chairman Kasper:** Nowhere in the resolution do I see language that tells us what a countermand is or what the countermand amendment would look like.

**Rep. B. Koppelman:** This resolution calls for a single issue amendment convention, and so any suggested language that any delegation was to propose from the state would have to have that be the subject matter. Are they allowed to consider a countermand amendment language that is different than what Mr. Kacprowicz authored?

**Rep. Johnston:** Don't the states already have countermand ability via nullification?

**Senator Larsen:** Here is a perfect example. California is in a big stink about sanctuary cities. They are their own state. That state cannot say no, I am keeping my sanctuary city, and they are doing it right now, and they are going to lose federal funding and everything else that the feds can pull back unless we as 26 or 34 states get together and said no, we want sanctuary cities. You are going to rescind or rewrite that to make that so people like it. It is the same thing that they did in Washington. Only they used the judicial branch to rescind and pull it back. This gives us our legislative sovereignty, our state sovereignty.

**Rep. Johnston:** In my opinion one of the reasons why nullification doesn't work is because of money. Wouldn't the same apply if you did have this countermand ability in 26 states and were contemplating meeting to overturn a federal law?

**Senator Larsen:** I disagree. If states get together and say that gas tax is not going to be okay with us. You need to change it or you need to not have it. The issue is enough to move states to action.

**Chairman Kasper** closed the hearing.



# 2017 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee  
Fort Union, State Capitol

SCR 4006  
3/23/2017  
29650

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Carmen Hart*

## Explanation or reason for introduction of bill/resolution:

A concurrent resolution making a formal application to Congress to call a countermand amendment convention for the sole purpose of proposing an amendment to the United States Constitution to provide states a process to collectively countermand or repeal any federal law or ruling

## Minutes:

**Vice Chair Louser** opened the meeting on SCR 4006. Chairman Kasper had been called out on an emergency.

**Rep. Laning** made a motion for a DO PASS on SCR 4006.

**Rep. C. Johnson** seconded the motion.

**Rep. Olson:** Regarding Line 25, Page 1 and Line 1, Page 2, what is the Article V referring to? How do we know what we are talking about?

**Rep. B. Koppelman:** Of all the proposals we have had the last couple sessions that have dealt with Article V, this is the one that I had the most concern with in how it is worded. If you recall, we were supposed to look up at the website and presume that somehow those two are linked without being able to be pulled apart, and I don't know that I agree with that. I am very much a proponent of Article V, but I am a proponent for specific purposes as we are considering what the calls are. I am going to resist the do pass.

**Vice Chair Louser:** In trying to answer Rep. Olson's concern, I think the way this reads is that the preapproved proposed countermand amendment is this language. If this were to be amended into the constitution, it would give the opportunity for a countermand on any of the federal decisions that were made to go back to several legislatures for a vote to repeal a decision made either by Congress, executive order, or the supreme court.

**Rep. Olson:** Could you point me to what part of it is the countermand amendment?  
countermand amendment

**Vice Chair Louser:** The text of what is on the website is not actually in the bill that is being decided by each of the states, not just ND. We would have to assume with passage of this resolution that would be the text of the discussion at the Article V convention should it be called for this purpose.

A roll call vote was taken. 3 Yeas, 10 Nays, 1 Absent. Motion fails.

**Rep. Johnston** made a motion for a DO NOT PASS on SCR 4006.

**Rep. Steiner** seconded the motion.

A roll call vote was taken. 10 Yeas, 3 Nays, 1 Absent.

**Rep. Johnston** will carry the bill.



Date: 3-23-17  
 Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 4006**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Laning Seconded By Johnson

Representatives	Yes	No	Representatives	Yes	No
Jim Kasper-Chairman	<u>A</u>		Pamela Anderson		<u>X</u>
Scott Louser-Vice Chairman	<u>X</u>		Mary Schneider		<u>X</u>
Jason Dockter		<u>X</u>			
Craig A. Johnson	<u>X</u>				
Daniel Johnston		<u>X</u>			
Karen Karls		<u>X</u>			
Ben Koppelman		<u>X</u>			
Vernon Laning	<u>X</u>				
Christopher D. Olson		<u>X</u>			
Karen M. Rohr		<u>X</u>			
Vicky Steiner		<u>X</u>			
Steve Vetter		<u>X</u>			

Fails

Total (Yes) 3 No 10

Absent 1

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 3-23-17  
 Roll Call Vote #: 2

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 4006**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

- Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Johnston Seconded By Steiner

Representatives	Yes	No	Representatives	Yes	No
Jim Kasper-Chairman	<u>A</u>		Pamela Anderson	<u>X</u>	
Scott Louser-Vice Chairman		<u>X</u>	Mary Schneider	<u>X</u>	
Jason Dockter	<u>X</u>				
Craig A. Johnson		<u>X</u>			
Daniel Johnston	<u>X</u>				
Karen Karls	<u>X</u>				
Ben Koppelman	<u>X</u>				
Vernon Laning	<u>X</u>				
Christopher D. Olson		<u>X</u>			
Karen M. Rohr	<u>X</u>				
Vicky Steiner	<u>X</u>				
Steve Vetter	<u>X</u>				

Total (Yes) 10 No 3

Absent \_\_\_\_\_

Floor Assignment Johnston

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**SCR 4006: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)**  
recommends **DO NOT PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING).  
SCR 4006 was placed on the Fourteenth order on the calendar.

**2017 TESTIMONY**

**SCR 4006**

Attachment 1  
4006  
3-3-17

Text of proposed

## **COUNTERMAND AMENDMENT**

ARTICLE 28 (or alternate number to be assigned by Congress)

**Section 1.** The Article restores State sovereignty in our Constitutional Republic by providing State Legislatures Countermand authority.

**Section 2.** State Legislatures in the several States shall have the authority to Countermand and rescind any Congressional Statute, Judicial decision, Executive Order, Treaty, government agency's regulatory ruling, or any other government or non-government mandate (including excessive spending and credit) imposed on them when in the opinion of 60 percent of State Legislatures the law or ruling adversely affects their States' interest. When the Countermand threshold has been reached, the law or ruling shall be immediately and automatically nullified and repealed. This Countermand authority shall also apply to existing laws and rulings.

**Section 3.** From the time the initial Countermand is issued by a State Legislature, the other Legislatures shall have 18 months to complete the Countermand process. If the Countermand process is not completed in 18 months, then the law or ruling that is being challenged shall remain enforceable.

**Section 4.** Each State Legislature must complete their Countermand affidavit and deliver a certified copy to the Chief Justice of the United States Supreme Court, the Leader of the United States Senate, the Speaker of the House of Representatives, the President of the United States, and when applicable the Government Agency or Body that is being challenged.

**Section 5.** Any elected or non-elected government official, or any non-government individual or organization, who intentionally obstructs or prevents the implementation of any provision in this Article shall have committed a criminal offense and shall be subject to impeachment (when applicable) and criminal prosecution and upon conviction serve up to five years in prison.

**Section 6.** Individual States shall have authority to prosecute violators of this Article under State laws in the absence of Federal prosecution after 90 days from the date of the alleged violation. Multiple prosecutions, by multiple States, for the same alleged crime are prohibited.

**Section 7.** The Article shall be immediately part of the United States Constitution upon ratification by three quarters of the State Legislatures in the several States.

**Section 8.** The provisions of this Article are enforceable within the United States which shall include the Several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands and the territories and possessions of the United States.